

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:
Glenoaks Station
Burbank, California 91504

Docket No. A2013-5

NOTICE OF THE UNITED STATES POSTAL SERVICE OF FILING ERRATA
(July 18, 2013)

The Postal Service hereby gives notice of filing errata to its Motion to Dismiss Proceedings, filed on July 15, 2013. Nine minor corrections to pages 1, 3 and 4 of the Motion to Dismiss Proceedings are being filed as an attachment to this pleading. The corrections are shown in gray highlighted text. The modifications reflect the fact that an incorrect version of the Final Determination was posted on July 15, 2013. This incorrect Final Determination was subsequently withdrawn and replaced by a corrected version of the Final Determination on July 16, 2013. The July 15, 2013 posting of the incorrect Final Determination is inconsequential to the arguments presented in the Motion to Dismiss Proceedings, however, because the Petitioners filed the instant appeal before the posting of any copy of the Final Determination, whether correct or incorrect. The Postal Service regrets the inconvenience, but does not believe any party is prejudiced.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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July 18, 2013

BEFORE THE
POSTAL REGULATORY COMMISSION
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In the Matter of:
Glenoaks Station
Burbank, California 91504

Docket No. A2013-5

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(July 15, 2013)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of an alleged Postal Service decision to discontinue the Glenoaks Station in Burbank, California. The Postal Service moves to dismiss on three grounds. First, this appeal is premature as the appeal was received before the Final Determination was posted. Second, the scope of section 404(d)(5) is limited to the discontinuance of a Post Office, and does not apply to the rearrangement of retail facilities within a community. Since the Petitioner's appeal concerns the rearrangement of retail facilities within the Burbank community, an event that falls outside the scope of section 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal. Third, the scope of section 404(d) is limited to Post Offices and its requirements do not extend to the closing of a station or branch; thus, the Commission lacks subject matter jurisdiction and should dismiss the appeal.

PROCEDURAL HISTORY

On July 3, 2013, the Postal Regulatory Commission ("Commission") docketed correspondence from Charlotte E. Costan, Sharyn Engle, Linda Ly, Anna May Nelson, and

Sharon Wright ("Petitioners").¹ The Commission also received correspondence on this matter from Victoria Lova on July 9, 2013.² These participants make no allegation that the Postal Service decision violated any statute or regulation. Rather, they make the general claim that the decision will negatively affect the community. By means of Order No. 1772 (July 5, 2013), the Commission instituted a proceeding under 39 U.S.C. §404(d)(5) and established Docket No. A2013-5 in order to consider Petitioners' appeals.

FACTUAL BACKGROUND

Glenoaks Station is located in Burbank, California at 1634 North San Fernando Boulevard, in an unincorporated area in Los Angeles County. On June 9, 2011, the Proposal to Close the Glenoaks Station and Continue to Provide Service by City Delivery (Proposal) was posted at the Glenoaks Station. Administrative Record, Item No. 17 and 23 (round-date stamp on Invitation to Comment indicates that it was removed on August 8, 2011).

On June 20, 2013, the Postal Service posted a one-page document entitled "Notice of Final Determination to [C]lose the Glenoaks Station." See Notice of Final Determination to

¹ Petition for Review Received from Charlotte E. Costan Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Sharyn Engle Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Linda Ly Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Anna May Nelson Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013); Petition for Review Received from Sharon Wright Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 3, 2013).

² Petition for Review Received from Victoria Lova Regarding Glenoaks Station Post Office, Burbank, CA 91504 (July 8, 2013).

Close Glenoaks Station.³ A corrected version of the final determination itself has not, however, been posted.⁴

Customers of the Glenoaks Station may obtain postal services at the Downtown Burbank Station, located approximately one mile from the Glenoaks Station; the Burbank Post Office, also located approximately one mile from the Glenoaks Station; and through <http://www.USPS.com/> and other alternate access options, including nine stamp consignment sites located within one mile of the Glenoaks Station. See Exhibit 1 (printout from [USPS.com](http://www.USPS.com/)).⁵

ARGUMENT

As an initial matter, this appeal is premature. Although the Postal Service has given customers a “notice” of the final determination by posting a one-page “Notice of Final Determination to [C]lose the Glenoaks Station”, as of the time of this filing, the corrected final determination itself has not yet been posted in the affected installations. In this circumstance, dismissal is the appropriate remedy. See Order No. 829, *Lafontaine, Kansas*, PRC Docket No. A89-8 (June 29, 1989) (dismissing an appeal that was premature); see also Order No. 833, PRC Docket No. A89-10, *Fineview, New York* (July 19, 1989). The Commission’s jurisdiction

³ The Notice of Final Determination to Close Glenoaks Station incorrectly included a notice of appeal rights to the Commission. This notice of appeal rights was included in error and does not create the right to appeal by virtue of its inclusion since subject matter jurisdiction cannot be created by waiver or forfeiture. See *U.S. v. Cotton*, 535 U.S. 625, 630 (2002); *U.S. v. Delgado-Garcia*, 374 F.3d 1337, 1341 (D.C. Cir. 2004); *Pollack v. Rosalind Franklin Univ.*, No. 04 C 5613, 2006 U.S. Dist. Lexis 92884, 13-14 (N.D. Ill. Dec. 20, 2006). The corrected Final Determination text does not include a notice of appeal rights to the Commission.

⁴ The undersigned counsel originally advised the Commission that the final determination was posted on June 20, 2013. However, counsel was under the mistaken impression that the final determination had actually been posted. In fact, counsel now understands that the only document posted in the Glenoaks Station on June 20, 2013 was a one-page notice entitled “Notice of Final Determination to [C]lose the Glenoaks Station,” that informed customers of the facts of the final determination. On July 15, 2013, a version of the final determination was posted, but this version was incorrect. Contrary to counsel’s original understanding, a corrected Final Determination document itself has not yet been posted, but efforts are being made by field personnel to do so. Should the Final Determination be posted during the pendency of this controversy, the Postal Service will provide notice to the Commission in the form of additions to the administrative record filed in this docket.

⁵ Exhibit 1 uses the term “Post Office” for retail units staffed by postal employees, thus including stations, branches and Post Offices.

need not be invoked because at the time the Commission received the petitions for review, the Final Determination itself was not publicly posted. Plans are underway to post the **corrected** final determination, and when it is posted, the Postal Service will amend its filing of the administrative record accordingly.

Even assuming that the appeal was deemed to be timely filed by virtue of the posting of the "Notice" of the Final Determination, the Commission should dismiss the complaint on jurisdictional grounds. Specifically, the procedural requirements of 39 U.S.C. § 404(d) do not apply because the closing of Glenoaks Station does not qualify as a discontinuance action envisioned by 39 U.S.C. § 404(d). When determining whether it has jurisdiction to hear an appeal, the Commission must consider the context of the Postal Service's actions in the affected community. Typically, a change to the Postal Service retail network in a community constitutes a "rearrangement" if the move or elimination of a Postal Service retail facility in that community is performed as part of an overall realignment of the network of access points in that community. As a result of the change, the postal services available to the community must continue to meet the community's postal needs as measured by customer use of postal services in that community.

The Commission and its predecessor, the former Postal Rate Commission, have long recognized that section 404(d) does not apply to Postal Service actions that constitute a rearrangement of retail facilities within a community.⁶ See Order No. 436, PRC Docket No. A82-10, *Oceana Station*, (June 25, 1982); Order No. 448, PRC Docket No. 2010-2, *Steamboat Springs, Colorado* (April 27, 2010); Order No. 477, PRC Docket No. 2010-3, *East Elko Station* (June 22, 2010); and Order No. 1159, PRC Docket No. 2011-90, *Pimmit Branch* (January 20, 2012). In 1982, the Commission dismissed an appeal considering the Postal Service's determination to close the Oceana Station in Virginia Beach as part of an overall plan to

⁶ For convenience, the term "Commission" refers to both the former Postal Rate Commission and its successor, the Postal Regulatory Commission.

rearrange postal retail and delivery operations within the Virginia Beach community. The plan included the future establishment of a new retail facility in Virginia Beach, located four miles from Oceana Station.⁷ Order No. 436 at 4.

Petitioners served by Oceana Station claimed that the change in retail operations qualified as a discontinuance under 39 U.S.C. § 404(d). In dismissing the appeal, the Commission opined that in enacting section 404(d), “Congress intended to permit the Postal Service to rely on less formal decision-making, and correspondingly, to give the Commission no jurisdiction to hear appeals of such decisions, when considering where retail facilities are to be located within the community.” *Id.*, at 7. The Commission concluded that “the Postal Service is not required to follow the formal section 404([d]) procedure when it is merely rearranging its retail facilities in a community.” *Id.*, at 1.

Similarly, in Steamboat Springs, the Commission dismissed an appeal after determining that the Postal Service had a “planned network of retail facilities in the Steamboat Springs community.” Order No. 448 at 5. In that appeal, the Postal Service’s planned network included the Sundance Post Office, which continued to house Post Office boxes, the Steamboat Springs Post Office (located 1.3 miles away), which provided retail services and Post Office box service, and plans to construct a new consolidated post office. *Id.*, at 5-6. In finding that the Postal Service’s action is a rearrangement of retail facilities in the community and not subject to appeal under section 404(d), the Commission accordingly dismissed the appeal.

Even when the rearrangement of postal retail services within the community include no plans to build a new retail facility, the Commission has concluded that section 404(d) is inapplicable. In East Elko, the Postal Service closed the East Elko Station and transferred retail services to the main Elko Post Office, located 1.5 miles away. Order No. 477 at 7. In dismissing

⁷ The City of Virginia Beach is relatively large at 307 square miles. See http://www.vbgov.com/file_source/dept/comit/Document/vb_facts_and_figures.pdf.

the appeal for lack of jurisdiction, the Commission explained “while there is no new facility... the East Elko Station customers are not losing access to the postal services offered in their community.” *Id.* Thus, under the Commission’s formulation, closing the East Elko Station was not a discontinuance action within the scope of section 404(d).

Most recently, in Pimmit Branch, the Postal Service decided to consolidate retail services from Pimmit Branch to the new retail facility at the main Falls Church Post Office, located two miles away. Order No. 1159 at 11. The Commission found that closing the Pimmit Branch was part of a broader plan to rearrange retail facilities in the Falls Church community; thus, it concluded that section 404(d) did not apply. *Id.*, at 12. Since the Commission has consistently held that the requirements of section 404(d) do not apply to such rearrangements, it dismissed the appeal for lack of jurisdiction.

As recognized in longstanding Commission precedent, the section 404(d) procedural requirements apply only where postal customers lose access to postal services, and postal customers do not lose access to postal services where alternate retail facilities are located in “close proximity” to the discontinued station. See Order No. 477 at 7-8. Here, Glenoaks Station customers will continue to have access to the Downtown Burbank Station, located approximately one mile from the Glenoaks Station, the Burbank Post Office, also located approximately one mile away from the Glenoaks Station, and numerous alternative access retail locations.⁸ Due to the close proximity of other postal facilities and the presence of alternate access options, closing the Glenoaks Station will not cause postal customers to lose access to postal services in their community. Because this appeal concerns the rearrangement of retail

⁸ According to usps.com, there are nine alternate access retail locations within one mile of the Glenoaks Station and a total of 28 locations within a three mile radius of the Glenoaks Station. Also, in addition to the Burbank Post Office and the Downtown Burbank Post Office, there are two other Postal Service-Operated retail facilities (Grand Central and Sun Valley) located within three miles of the Glenoaks Station.

facilities within a community, section 404(d) does not apply. Accordingly, the Commission should dismiss the appeal.

Finally, the Commission should dismiss the appeal on grounds that the facility in question is not a "Post Office." This appeal concerns the discontinuance of a classified station, which is a retail facility that is Postal Service-operated and is under the responsibility of an Administrative Post Office. See Handbook PO-101, Postal Service-Operated Retail Facilities Discontinuance Guide (January 2012), at 53 (defining Classified Station). In the Postal Service's view, section 404(d) does not apply to the Glenoaks Station because the Glenoaks Station is not an independent Post Office.⁹ Petitioners fail to allege facts that constitute a condition precedent to any jurisdiction of the Commission under Section 404(d). Therefore, the Commission should dismiss the appeal for lack of jurisdiction.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

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⁹ See Comments of the United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. 2010-3, *East Elko Station* (April 19, 2010); H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976) (conference report on H.R. 8603, which explained that the provision granting the right of appeal apply to Post Offices only and not to other postal facilities).